to divorce suits, but to all kinds of litigation, is equally true, that a contract is void whereby one agrees to obtain or procure testimony of certain facts which will successfully support or defeat a lawsuit, or which provides that payment to the party procuring such testimony is to be contingent upon the result of the action for which he is engaged to procure it. It is the element of payment contingent on the success of the litigation in which the evidence is to be produced, or the fact that the agreement is to procure evidence, not of facts as they exist, but of particular facts necessary to the success of the party litigant, who contracted for their production, which vitiates the contract. It is the contingency on the one hand, and the agreement to furnish a given set of facts essential to a successful litigation on the other, and both of which in their nature are calculated to induce false charges and the production of perjured testimony, to subvert the truth and pervert justice, through fraud, trickery, and chicanery at the hands of unscrupulous private detectives or other conscienceless persons. which has impelled the law, with wisdom, to declare such contracts illegal. Patterson *v.* Donner, 48 Cal. 369; Lyon *v.* Hussey, 82 Hun, 15, 31 N. Y. Supp. 281. * * * Certainly there is no rule of law which precludes a party in a divorce action or in any other action, from employing a person to do detective work, or in a divorce action itself to search for witnesses or to procure existing testimony either to support or defend such an action, or to acquire information of the past conduct or life of either spouse, or to set a watch upon the personal acts or associates of either. Any one has a right, when threatened with litigation, or desiring himself to sue, to employ assistance with a view of ascertaining facts as they exist, and to hunt up and procure the presence of witnesses who know of facts and will testify to them; and this is true whether the action be one of divorce or of any other character. Neece *v.* Joseph, 95 Ark. 522, 129 S. W. 797, 30 L. R. A. (N. S.) 278, Ann. Cas. 1912A, 655; Quirk *v.* Miller, 14 Mont. 467, 36 Pac. 1077, 25 L. R. A. 87, 43 Am. St. Rep. 647. Any other rule would leave the parties in a divorce suit, and every other suit, restricted to their own individual efforts to obtain existing evidence which would be absurd."

Libel and Slander—Construction of Publication.—In Washington Post Co. *v.* Chaloner, 39 Sup. Ct. Rep. 448, the Supreme Court of the United States held that a newspaper item saying that "C. shot and killed G." while the latter was abusing his wife, who had taken refuge at the former's home, is not libelous per se as matter of law

The Washington Post, a daily newspaper of wide circulation, published by petitioner, contained the following item:

"John Armstrong Chaloner (Chanler), brother of Lewis Stuyve-

sant Chanler, of New York, and former husband of Amelie Rives, the authoress, now Princess Troubetskoy, is recuperating at Shadeland, the country home of Major Thomas L. Emry, near Weldon, North Carolina, where he had gone to recuperate following a nervous breakdown as a result of the tragedy at his home, Merry Mills, near Cobham, on March 15, when he shot and killed John Gillard, while the latter was abusing his wife, who had taken refuge at Merry Mills, Chaloner's home. Following the shooting, Chaloner suffered a nervous breakdown, and was ordered by his physician to take a long rest. He decided to visit his old friend, Major Emry, who, with Chaloner, was instrumental in founding Roanoke Rapids, a manufacturing town five miles from Weldon."

Claiming damages on account of shame, infamy, and disgrace inflicted, respondent brought an action against the publishing company, and obtained judgment for $10,000 which was affirmed by the Court of Appeals (36 App. D. C. 231, 47 App. D. C. 66). On appeal to the Supreme Court of the United States the case was reversed. That court said in part:

"The applicable rule was tersely stated by the Circuit Court of Appeals, Sixth Circuit, through Judge Lurton, afterwards of this court, in Commercial Pub. Co. *v.* Smith, 79 C. C. A. 410, 149 Fed. 704, 706, 707. Citing supporting authorities, he said:

'A publication claimed to be defamatory must be read and construed in the sense in which the readers to whom it is addressed would ordinarily understand it. So the whole item, including display lines, should be read and construed together, and its meaning and signification thus determined. When thus read, if its meaning is so unambiguous as to reasonably bear but one interpretation, it is for the judge to say whether that signification is defamatory or not. If, upon the other hand, it is capable of two meanings, one of which would be libelous and actionable and the other not, it is for the jury to say, under all the circumstances surrounding its publication, including extraneous facts admissible in evidence, which of the two meanings would be attributed to it by those to whom it is addressed or by whom it may be read.' See Peck *v.* Tribune Co., 214 U. S. 185, 190, 53 L. ed. 960, 962, 29 Sup. Ct. Rep. 554, 16 Ann. Cas. 1075.

"Counsel for respondent admit (and properly so) that, upon the authorities, a published item saying, 'C shot and killed G,' without more, would not be libelous per se—it does not set forth the commission of a crime in unambiguous words. And we are unable to conclude that, as matter of law, addition of the words, 'while the latter was abusing his wife, who had taken refuge at Merry Mills, Chaloner's home,' would convert such a statement in to a definite charge of murder. On the contrary, they might at least suggest to reasonable minds that the homicide was without malice. Consider-

ing the wide circulation of present-day newspapers and their power for doing injury to reputation, it is highly important that the ancient doctrine, 'Whatever a man publishes he publishes at his peril,' should be strictly enforced. But this can not be done properly by taking away from the jury doubtful questions of fact."

Monopolies—Refusal to Sell to Retailers Not Maintaining Specified Retail Prices.—In United States *v.* Colgate & Co., 39 Sup. Ct. Rep. 465, the Supreme Court of the United States held that in the absence of any purpose to create or maintain a monopoly a manufacturer engaged in an entirely private business may refuse to sell to retailers who will not maintain specified resale prices.

The court said: "The purpose of the Sherman Act is to prohibit monopolies, contracts and combinations which probably would unduly interfere with the free exercise of their rights by those engaged, or who wish to engage, in trade and commerce—in a word to preserve the right of freedom to trade. In the absence of any purpose to create or maintain a monopoly, the act does not restrict the long recognized right of trader or manufacturer engaged in an entirely private business, freely to exercise his own independent discretion as to parties with whom he will deal; and, of course, he may announce in advance the circumstances under which he will refuse to sell. 'The trader or manufacturer, on the other hand, carries on an entirely private business, and can sell to whom he pleases.' United States *v.* Trans-Missouri Freight Association, 166 U. S. 290, 320, 17 Sup. Ct. 540, 551 (41 L. Ed. 1007). 'A retail dealer has the unquestioned right to stop dealing with a wholesaler for reasons sufficient to himself, and may do so because he thinks such dealer is acting unfairly in trying to undermine his trade.' Eastern States Retail Lumber Dealers' Association *v.* United States, 234 U. S. 600, 614, 34 Sup. Ct. 951, 955 (58 L. Ed. 1490, L. R. A. 1915A, 788). See also Standard Oil Co. *v.* United States, 221 U. S. 1, 56, 31 Sup. Ct. 502, 55 L. Ed. 619, 34 L. R. A. (N. S.) 834, Ann. Cas. 1912D, 734; United States *v.* American Tobacco Co., 221 U. S. 106, 180, 31 Sup. Ct. 632, 55 L. Ed. 663; Boston Store of Chicago *v.* American Graphophone Co. et al., 246 U. S. 8, 38 Sup. Ct. 257, 62 L. Ed. 551, Ann. Cas. 1918C, 447. In Dr. Miles Medical Co. *v.* Park & Sons Co., supra, the unlawful combination was effected through contracts which undertook to prevent dealers from freely exercising the right to sell."